

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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JOHN IN,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil No. 2:21-cv-00608-JMG
	:	
MARK CAPOZZA, <i>et al.</i> ,	:	
Respondents.	:	

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**ORDER**

**AND NOW**, this 23<sup>rd</sup> day of May, 2022, upon consideration of the Petition for a Writ of Habeas Corpus (ECF No. 1), Petitioner’s Brief in Support of His Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 19), Respondents’ Answer to Petition for Writ of Habeas Corpus (ECF No. 24), and the Report and Recommendation of United States Magistrate Judge Marilyn Heffley (ECF No. 26), and after an independent review of the record, it is **HEREBY ORDERED** that: <sup>1</sup>

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<sup>1</sup> When neither party objects to a magistrate judge’s report and recommendation, as is the case here, the district court is not statutorily required to review the report, under de novo or any other standard. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 152 (1985). Nevertheless, the United States Court of Appeals for the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. *See Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *writ denied* 484 U.S. 837 (1987). “When no objections are filed, the district court need only review the record for plain error or manifest injustice.” *Harper v. Sullivan*, No. 89-4272, 1991 U.S. Dist. LEXIS 2168, at \*2 n.3 (E.D. Pa. Feb. 22, 1991). *See also Hill v. Barnacle*, No. 15-3815, 2016 U.S. App. LEXIS 12370, at \*16-17 (3d Cir. 2016) (holding that even when objections are filed, district courts “are not required to make any separate findings or conclusions when reviewing a magistrate judge’s recommendation de novo under 28 U.S.C. § 636(b)”); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (explaining that in the absence of a timely objection, the court should review the magistrate judge’s report and recommendation for clear error). “A ‘plain’ error is one that is ‘clear’ or ‘obvious.’” *Gov’t of the V.I. v. Lewis*, 620 F.3d 359, 364 (3d Cir. 2010). The district court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

1. The Report and Recommendation (ECF No. 26) is **APPROVED and ADOPTED**;<sup>2</sup>
2. The Petition for a Writ of Habeas Corpus (ECF No. 1) is **GRANTED**; and
3. Petitioner's conviction and sentence are **VACATED**.

BY THE COURT:

/s/ John M. Gallagher  
JOHN M. GALLAGHER  
United States District Court Judge

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<sup>2</sup> The Court finds no plain error in the Magistrate Judge's proposed factual findings or legal conclusions.